

UNITED STATES OF AMERICA)
)
 v.) ORDER
)
 LATCHMIE TOOLASPRASHAD)

BACKGROUND

DISCUSSION

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manifest injustice. Accordingly, there is no basis for this Court to alter its dismissal of Mr. Toolasprashad's motion to vacate pursuant to 28 U.S.C. § 2255.

Mr. Toolasprashad Remains in Custody

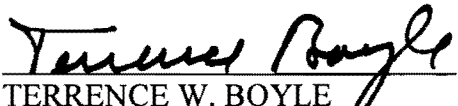
In his current Motion, Mr. Toolasprashad asserts that he is no longer in custody for purposes of a petition pursuant to 28 U.S.C. § 2255, and that therefore his motion should be considered as a petition for writ of error *coram nobis*. However, the United States Supreme Court has held that “the use of habeas corpus has not been restricted to situations in which the applicant is in actual, physical custody.” *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963). Specifically, “the federal courts have held that the conditions of parole and probation sufficiently restrain the individual to constitute the ‘custody’ which is a condition of...attacking a sentence under 28 U.S.C. § 2255.” *Coronado v. U.S. Bd. of Parole*, 540 F.2d 216, 217 (5th Cir. 1976).

Whether an individual is “in custody” for purposes of a petition pursuant to 28 U.S.C. § 2255 is determined at the time the habeas action is filed, which in this case was on October 31, 2011 [DE 43]. *See United States v. Bryson*, 981 F.2d 720, 726 (4th Cir. 1992) (citing *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)). At that time, according to Mr. Toolasprashad's Parole Certificate, he had been paroled and “released to the actual, physical custody of the Immigration and Customs Enforcement.” Although Mr. Toolasprashad asserts that his motion should have been considered as a petition for a writ of error *coram nobis*, that writ is available only when the petitioner is not in custody. *United States v. Smith*, 77 F. App'x 180, 180 (4th Cir. 2003) (affirming the district court's denial the writ of *coram nobis* by virtue of the defendant's supervised release status). Because Mr. Toolasprashad was in custody by virtue of his status on parole, the Court properly considered, and properly denied, his motion as a second or successive petition pursuant to 28 U.S.C. § 2255.

CONCLUSION

Because Mr. Toolasprashad does not demonstrate legal error in the Order, his Motion for Reconsideration [DE 53] is DENIED.

SO ORDERED, this the 10 day of February, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE